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TAGS: [KCRM](#) [LE](#) [MOPS](#) [PINR](#) [PTER](#) [SY](#) [UNSC](#)  
SUBJECT: HARIRI TRIBUNAL: UN LEGAL COUNSEL WELCOMES  
U.S./FRENCH COMMENTS

REF: A. SECSTATE 140003  
[1](#)B. JACOBSON/WILLSON EMAIL-09/05/06  
[1](#)C. USUN 1366

[1](#)1. (SBU) BEGIN SUMMARY: USUN Legal, accompanied by French Mission political officers, delivered points (ref A) regarding the draft Hariri tribunal agreement to UN Legal Counsel Michel on September 5. We noted USG support for his return to Lebanon that evening. In addition per ref B request, USUN sought clarification on whether the UN intends to reference the 1988 Arab Convention on the Suppression of Terrorism in the agreement. The French cautioned that the Secretary-General should not request a Chapter VII resolution

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to compel cooperation with the tribunal when it seeks Security Council approval of the agreement establishing the tribunal. (Note: The French prefer to defer action on compulsion until the case is more developed. End note.) Pressing Michel to submit the agreement to the Security Council for approval as soon as possible ) preferably October ) the French sought Michel's views on how he plans to proceed. Stressing that he does not plan to finalize the agreement during his visit, Michel expressed appreciation for P-2 input, promised to take note of it, and agreed to consult again upon his return. END SUMMARY.

[1](#)2. (SBU) Michel welcomed the comments on the draft agreement to establish the Hariri tribunal as he prepared to leave for Lebanon. Michel said he plans to meet with the Prime Minister, the Minister of Justice, and the Speaker of Parliament, as well as P-3 (or P-5 ambassadors) before leaving Lebanon on September 8. The text of the draft agreement and annexed tribunal statute both will be part of those discussions, he said. He also clarified that he is not bringing the final version of the agreement to Lebanon and does not intend to come close to signing the agreement during his trip. Michel could not predict whether the September 5 assassination attempt against Samir Shahadah would affect his trip, but expressed concern about news reports that it seemed related "at least in part" to the investigation of Hariri's assassination. Michel said the Lebanese press reports on his trip and on the tribunal have been speculative, including recent reports that the tribunal would be located in Cyprus and that Serge Brammertz, Commissioner of the International Independent Investigation Commission (UNIIIC), would be the tribunal's prosecutor. These issues have yet to be decided, he noted.

[1](#)3. (SBU) At Michel's request, Office of Legal Affairs (OLA) Legal Officer Daphna Shrager then responded to the specific points concerning the text of the agreement. Shrager said the

UN intended the agreement to provide the tribunal with jurisdiction over the 14 other attacks committed between October 1, 2004 and December 31, 2005, but not any other terrorist acts. Although the agreement would not refer by name to the other attacks, she said the Secretary-General's report to the Council would cite the pages in the fourth UNIIIC report to the Security Council that suggest the attacks were linked. In providing jurisdiction over the 14 other attacks, Shraga said OLA had followed its policy of balancing the need to ensure that a tribunal's temporal jurisdiction covers the main crimes and perpetrators with the need to ensure cost effectiveness. (Note: USUN does not share OLA's view. End note.) In this case, OLA is concerned that if the tribunal has jurisdiction only over the Hariri assassination, the UN will be "take one act out of context and we in the UN will be perceived as not objective." OLA wants to avoid creating an impression that the tribunal will provide selective justice, she said. Although OLA had thought it was important to limit the tribunal's temporal jurisdiction, she admitted that the attempted assassination of Shahadah had given her "second thoughts" about that approach.

¶4. (SBU) With respect to language providing jurisdiction over crimes against humanity, Shraga acknowledged that Lebanese law might provide a sufficient basis for jurisdiction but said OLA wanted to "inject as many elements from international law into the tribunal." If the tribunal's competence is limited to national law, issues such as head of state immunity could be more difficult to address, she said. Characterizing U.S. and French concerns as "political," she said crimes against Lebanese law and crimes against humanity are "mutually inclusive," and the tribunal should give the prosecutor flexibility to bring charges of crimes against humanity if he or she believes the facts exist to support those charges. The French expert responded that France doubts that, as a legal matter, the crimes can be

characterized as crimes against humanity. While acknowledging U.S. and French concerns, Shraga said a decision to omit crimes against humanity from the tribunal's jurisdiction could raise countervailing objections. She said OLA decided to keep the language on crimes against humanity in the draft agreement after its consultations with jurists such as Antonio Cassese, the first President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), who argued for its inclusion.

¶5. (SBU) On the issue of the 1998 Arab Convention on the Suppression of Terrorism, Shraga and Michel indicated they could be flexible. Michel said OLA included a reference to the Convention in the draft agreement because it wanted to avoid referring to Lebanese law generally, which could be overly inclusive and provide a basis for numerous different interpretations. He suggested that the agreement could be revised to refer to specific articles of the Convention that define terrorist offenses, without referring to those that provide exceptions for national liberation movements.

¶6. (SBU) In response to the French concern about when OLA would suggest a Chapter VII resolution, Michel said they would consult carefully to avoid making a proposal that would create difficulties in the Security Council. At a minimum, the Secretary-General's report to the Security Council would include a sentence saying that measures will have to be taken to ensure cooperation with the tribunal. A Chapter VII resolution could be useful to clarify that the agreement has primacy, particularly with respect to any issues on which international and domestic law differ. He noted different views among Council members on what is necessary for a Security Council to be binding and mused that it might be preferable to avoid being "too dogmatic" about what is and is not necessary. Shraga noted that a Chapter VII resolution would be necessary for enforcement, although in practice even Chapter VII resolutions are unenforceable, but then said the Lebanese have insisted upon securing a Chapter VII resolution. The French reiterated that, although they do not

disagree with the UN on substance, they are concerned that proposing an agreement to the Council in October that refers to crimes against humanity and seeks a Chapter VII resolution will break consensus in the Security Council "at a time we need this consensus, on Lebanon in particular."

¶7. (SBU) Michel then previewed his plans for finalizing the agreement. The Lebanese press has reported incorrectly that the UN plans to have the Lebanese Parliament approve the agreement and then bring it to the Security Council before the Secretary-General signs it, he said. Michel plans to get comments from the Lebanese during his visit and then inform and consult with Security Council members. After those discussions, Michel thought he would have the elements for the Secretary-General's report to the Council, which would attach the agreement and statute for establishing the tribunal. Once the Security Council has agreed to a document, the Secretary-General will sign it, and then Lebanon's parliamentary approval process can begin.

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